

### **Remarks**

Claims 100-102, 131-136, 138-141, 145-157, and 159-207 are now pending. Claims 182-204 have been added. Support for claims 205-207 can be found on page 62 of the specification. Claims 1-99, 103-130, 137, 142-144, and 158 have been canceled and claims 100-102, 138, 139, 145-150, 155, 159, 160, 162, and 179 have been amended without any prejudice or disclaimer of any previously claimed subject matter.

In the specification, Table 12, on page 191, beginning on line 1, has been amended to correct minor editorial problems.

#### **Supplemental Information Disclosure Statement**

On June 23, 2003, Applicants submitted a Supplemental Information Disclosure Statement, citing three US patents, eighteen International Patent Publications, two GB Patent Publications, two FR Patent Publications, and two articles. Applicants respectfully request the Examiner acknowledge entry and consideration of said Supplemental Information Disclosure Statement.

In addition, pursuant to the duty of disclosure under 37 CFR §§ 1.56, 1.97 and 1.98, Applicants cite the publications listed on the accompanying PTO-1449. Copies of all listed references are enclosed. The citation of this information does not constitute an admission of priority or that any cited item is available as a reference, or a waiver of any right the Applicants may have under the applicable statutes, regulations and Rules of Practice in patent cases, or otherwise. Applicants respectfully request the Examiner acknowledge entry and consideration of the present Supplemental Information Disclosure Statement and Form 1449 submitted with this response.

It is noted that the Examiner alleged that the reference BAGINSKY, S.G. et al., "Mechanism of action of a pestivirus antiviral compound" PNAS USA 2000, 97(14), 7981-7986 ("BA"), cited in the Information Disclosure Statement submitted February 25, 2002 was illegible. Therefore, Applicants submit a clean copy of the reference in the currently attached Supplemental Information Disclosure Statement as reference "AH".

The Examiner's attention is specifically directed to U.S. Patent Application No. 09/867,078, filed May 23, 2001, now published as U.S. Patent Application Publication No. 2003/0050229 A1, describing methods to treat HCV comprising administering  $\beta$ -D-pyrimidine compounds that are substituted in the 2'-position with two non-hydrogen substituents. The Examiner of the '078 application has indicated allowable subject matter. Applicants enclose a Terminal Disclaimer that disclaims the terminal portion of any patent that issues from this application that extends beyond the term of the a patent issuing from the '078 application.

#### Objections to the Specification

Table 12, on page 191 of the specification, was objected to because the notation associated with the CC<sub>50</sub> was inconsistently labeled. Applicants have amended the specification such that the \*\* notation in the table is consistently labeled and defined.

#### Rejections under 35 U.S.C. § 112, second paragraph

Claims 100-102, 145-150 and 155 were rejected under 35 U.S.C. § 112, second paragraph, allegedly because the term "host" is indefinite. According to the Examiner's suggestion, Applicants have amended the claims such that the host is limited to a host in need thereof.

Claims 137 and 158 were rejected under 35 U.S.C. § 112, second paragraph, allegedly because the "dosage unit" limitation is redundant to the claims from which they depend. Solely

to promote prosecution, Applicants have cancelled these claims and added the limitation to dependent claims 138, 139, 159, and 160.

Claim 155 was rejected under 35 U.S.C. § 112, second paragraph, allegedly because the Markush language is indefinite. According to the Examiner's suggestion, Applicants have amended the claim such that the term "or" is inserted between the last two variables of the groups defining  $R^4$ ,  $R^5$  and  $R^6$ .

Claim 155 was rejected under 35 U.S.C. § 112, second paragraph, allegedly because the term "substituted" is indefinite. Solely to promote prosecution, Applicants have amended the claim such that the phenyl moiety is substituted with one or more substituents selected from the group consisting of hydroxyl, amino, alkylamino, arylamino, alkoxy, aryloxy, nitro, cyano, sulfonic acid, sulfate, phosphonic acid, phosphate, and phosphonate (page 46, lines 7-12).

Claims 162 and 179 were rejected under 35 U.S.C. § 112, second paragraph, allegedly because the term "substantially pure form" is indefinite. Solely to promote prosecution, Applicants have amended the claim such that it is directed to compounds that are at least 85% by weight free of the  $\beta$ -L-isomer (page 50, lines 12-16).

Applicants submit that the currently presented claims, limited to methods for the treatment of a flavivirus or pestivirus infection in a host in need thereof using  $\beta$ -D-pyrimidine compounds that are substituted in the 2'-position with two non-hydrogen substituents, are in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Applicants do not believe any fee is due with this Amendment and Response to Office Action and Transmittal of Supplemental Information Disclosure Statement; however, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0980.

Respectfully submitted,

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